

# C A M P A I G N F O R ACCOUNTABILITY

November 8, 2017

By email: [FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

Michael Marquis  
Freedom of Information Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Freedom of Information Request**

Dear Mr. Marquis:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and Department of Health and Human Services (“HHS”) implementing regulations, 45 C.F.R. Part 5.

Specifically, CfA requests that HHS produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and Valerie Huber from January 20, 2017 to the date of her hire, on or around June 6, 2017.
2. All calendar entries reflecting meetings between HHS and Valerie Huber from January 20, 2017 to the date of her hire, on or around June 6, 2017.
3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials exchanged between Valerie Huber, chief of staff to the assistant secretary for health at HHS, and any representatives of Ascend or its predecessor organization, the National Abstinence Education Association, from the date of her hire, on or around June 6, 2017, to the date the search is conducted.
4. All calendar entries reflecting meetings between Valerie Huber and any representatives of Ascend or its predecessor organization, the National Abstinence Education Association, from the date of her hire, on or around June 6, 2017, to the date the search is conducted.
5. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and Charmaine Yoest from January 20, 2017 to the date of her hire, on or around April 28, 2017.
6. All calendar entries reflecting meetings between HHS and Charmaine Yoest from January 20, 2017 to the date of her hire, on or around April 28, 2017.

7. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received exchanged between Charmaine Yoest, assistant secretary of public affairs at HHS, and any representatives of Americans United for Life, American Values, and Family Research Council, from the date of her hire, on or around April 28, 2017, to the date the search is conducted.
8. All calendar entries reflecting meetings between Charmaine Yoest and any representatives of Americans United for Life, American Values, and Family Research Council, from the date of her hire, on or around April 28, 2017, to the date the search is conducted.
9. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and Teresa Manning from January 20, 2017 to the date of her hire, on or around May 2, 2017.
10. All calendar entries reflecting meetings between HHS and Teresa Manning from January 20, 2017 to the date of her hire, on or around May 2, 2017.
11. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials exchanged between Teresa Manning, deputy assistant secretary for population affairs, and any representatives of Family Research Council and National Right to Life, from the date of her hire, on or around May 2, 2017, to the date the search is conducted.
12. All calendar entries reflecting meetings between Teresa Manning and any representatives of Family Research Council and National Right to Life, from the date of her hire, on or around May 2, 2017, to the date the search is conducted.
13. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials received by HHS from, sent by HHS to, or exchanged between HHS and Matthew Bowman from January 20, 2017 to the date of his hire, on or around July 10, 2017.
14. All calendar entries reflecting meetings between HHS and Matthew Bowman from January 20, 2017 to the date of his hire, on or around July 10, 2017.
15. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other materials exchanged between Matthew Bowman, counsel at HHS, and Alliance Defending Freedom, from the date of his hire, on or around July 10, 2017, to the date the search is conducted.
16. All calendar entries reflecting meetings between Matthew Bowman and Alliance Defending Freedom, from the date of his hire, on or around July 10, 2017, to the date the search is conducted.

By way of background, prior to her employment with HHS, Valerie Huber served as president and CEO of Ascend, formerly known as the National Abstinence Education Association (“NAEA”).<sup>1</sup> Charmaine Yoest, before beginning work at HHS, served as president and CEO of Americans United for Life, as a senior fellow with American Values, and as vice president of

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<sup>1</sup> Jessie Hellmann, *Abstinence education advocate named to HHS post*, *The Hill*, June 6, 2017, available at <http://thehill.com/policy/healthcare/336620-abstinence-education-advocate-named-to-hhs-post>.

Family Research Council.<sup>2</sup> Teresa Manning came to HHS after serving as a legislative analyst for Family Research Council and as a lobbyist for National Right to Life.<sup>3</sup> Immediately before his tenure at HHS, Matthew Bowman served as senior legal counsel at Alliance Defending Freedom.<sup>4</sup>

Each of these organizations – Ascend, Americans United for Life, American Values, Family Research Council, and National Right to Life – has sought to influence this new Congress and administration. For instance, American Values and Family Research Council joined the “Pro-Life Coalition” in support of the Trump-Pence ticket.<sup>5</sup> American Values met with Vice President Pence on the eve of the March for Life,<sup>6</sup> National Right to Life met with Speaker Paul Ryan to discuss “advancing a conservative agenda,”<sup>7</sup> and both organizations have met with President Trump to discuss his agenda in Congress, including the nomination and confirmation of Justice Neil Gorsuch.<sup>8</sup> Now, representatives from these organizations work for the American public as employees of HHS. As such, the public deserves to know how these HHS employees sought to influence the agency prior to their hires, and whether and to what extent their former employers now seek to influence them within the agency.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our

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<sup>2</sup> Rachana Pradhan, Trump names anti-abortion leader Yoest to top HHS post, *Politico*, April 28, 2017, available at <http://www.politico.com/story/2017/04/28/charmaine-yoest-assistant-secretary-of-public-affairs-hhs-237743>

<sup>3</sup> Juliet Eilperin, Trump picks antiabortion activist to head HHS family planning section, *The Washington Post*, May 2, 2017, available at <https://www.washingtonpost.com/news/powerpost/wp/2017/05/01/trump-picks-antiabortion-activist-to-head-hhs-family-planning-program/>.

<sup>4</sup> Robert Pear, Foes of Obama-Era Rule Work to Undo Birth Control Mandate, *New York Times*, July 10, 2017, available at <https://www.nytimes.com/2017/07/10/us/politics/birth-control-contraception-health-care-bill.html>.

<sup>5</sup> Press Release, The Susan B. Anthony List, Trump Campaign Announces National Co-Chairs of Pro-Life Coalition, Sept. 27, 2016, available at <https://www.sba-list.org/newsroom/press-releases/trump-campaign-announces-national-co-chairs-pro-life-coalition>.

<sup>6</sup> Elizabeth Dias, Inside Mike Pence’s Private Meeting with March for Life Leaders, *Time*, Jan. 27, 2017, available at <http://time.com/4651781/mike-pence-march-life-meeting-abortion/>.

<sup>7</sup> Press Release, Office of the Speaker of the House Paul Ryan, 115<sup>th</sup> Congress, Speaker Ryan Meets with Conservative Leaders, March 30, 2017, available at <http://www.speaker.gov/press-release/speaker-ryan-meets-conservative-leaders>.

<sup>8</sup> Wolf (CNN television broadcast Feb. 1, 2017), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/1702/01/wolf.02.html>.

request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>9</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>10</sup>

In addition, please note that in conducting a “reasonable search” as required by law, HHS must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HHS’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>11</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but HHS’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with HHS to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>12</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415

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<sup>9</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149–150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–956 (D.C. Cir. 2016).

<sup>10</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>11</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>12</sup> *FOIA Improvement Act of 2016* § 2 (Pub. L. No. 114–185).

U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>13</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>14</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>15</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>16</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with HHS before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>17</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations

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<sup>13</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>14</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>15</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>16</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>17</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

or activities of the government.”<sup>18</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

As noted above, the four HHS employees whose communications are the subject of this request each came to HHS from ideologically-driven organizations who often sought to influence the policies being promoted by this Congress and this administration. Some of those policies are enormously consequential to the American public. Since these HHS employees are now employed on behalf of the American public, the public has a right to know how their former organizations influenced and continue to influence HHS.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA’s financial interest. CfA is committed to protecting the public’s right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

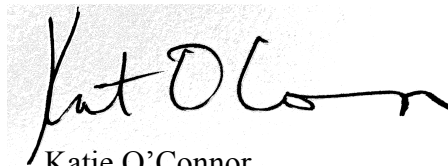
Accordingly, CfA qualifies for a fee waiver.

### **Conclusion**

CfA looks forward to working with HHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA’s request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor", is written over a light gray rectangular background.

Katie O'Connor  
Legal Counsel

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<sup>18</sup> 45 C.F.R. § 5.54(a).